

### REMARKS

This responds to the Office Action mailed on January 2, 2009.

Claims 1, 11, 21, and 22 are amended, no claims are canceled, and no claims are added; as a result, claims 1 to 22 are now pending in this application.

#### §101 Rejection of the Claims

Claims 1-10 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In response, Applicants have amended claims 1 to 10 to clarify that the computer-implemented system includes “a processor and memory for executing modules of programming code” is being claimed. Since a computer-implemented system a processor and memory for executing modules of programming code is being claimed, the claims now cover patentable subject matter. Withdrawal of the rejection under 35 U.S.C. § 101 is respectfully requested.

#### § 102 and 103 Rejection of the Claims

Claims 1-3, 5, 8, 10-13, 15, 18 and 20-22 were rejected under 35 U.S.C. § 102(e) as being anticipated by Harding et al. (U.S. Publication No. 2005/0144052, hereinafter referred to as the Harding reference). Claims 4 and 14 were rejected under 35 U.S.C. § 103(a) as being obvious over Harding in view of Cheng et al. (U.S. Publication No. 2002/0059130, hereinafter referred to as the Cheng reference). Claims 6-7 and 16-17 were rejected under 35 U.S.C. § 103(a) as being obvious over Harding. Claims 9 and 19 were rejected under 35 U.S.C. § 103(a) as being obvious over Harding in view of “www.amazon.com” (October 18, 2000, hereinafter referred to as the Amazon reference). The Applicants respectfully traverse. The Applicants submit that the independent claims of the present application are not anticipated by nor rendered obvious in view of the Harding reference.

Before directly addressing the Examiner’s rejections, a brief review of the present disclosure is desirable. The present disclosure is directed at a method and system to detect outlying behavior in a network-based marketplace. In order to detect “outlying behavior”, one

must first determine what normal behavior is. The disclosed system determines what normal behavior is by calculating peer information. The peer information is a set of statistics computed from the combined attribute information of a plurality of sellers. The system then compares the attributes of an individual seller (the seller's behavior) against the peer information (the normal behavior) to determine if that individual seller is an outlier from its peers. A detection module determines if the comparison difference constitutes an outlier.

The main reference cited by the Examiner is the Harding reference. The Harding reference discloses a system for profiling item sellers to inform item purchasing decisions and build trust in a multiple-seller marketplace. As set forth in paragraphs [0026] to [0028], the system of the Harding reference calculates statistics for each of the sellers by combining a set of  $n$  different qualitative measures collected for each seller. On page 4 of the Examiner's response, the Examiner stated "Examiner construes the second group to be a subset of the first group and paragraph [0026] discloses computing statistics for the sellers. Although statistics are calculated for the 'sellers' in the Harding reference, the statistics calculated are statistics for the individual sellers and not statistics for the plurality of sellers. Specifically, Paragraph [0028] of the Harding reference provides a specific equation that combines various different qualitative measures for a specific seller into a combined score. This score represents an absolute value made up of individual qualitative measures for that seller. Thus, the Harding reference fails to disclose any statistic calculated on the plurality of sellers.

Furthermore, the system of the Harding reference fails to disclose a comparison against its peers at all! Step 604 in Figure 6 of the Harding reference specifies that "based upon a determined score, determine whether seller is a recommended seller". This is more explicitly set forth in paragraph [0042] that states:

[0042] In step 604, based upon the score determined in step 603, the facility determines whether the seller should be designated as an recommended seller. In some embodiments, **this involves comparing the score determined for the seller to a minimum seller score threshold. For example, where the facility utilizes a seller score threshold of 80, those sellers having scores greater than 80 (or, alternatively, greater than or equal to 80) are designated as recommended sellers.** In step 605, the facility loops back to step 602 to process the next seller. In step 606, the facility loops back to step 601 through repeat the process of rating the sellers at a future time.

(Emphasis added)

In the system of the Harding reference, the determination of whether one is a 'recommended seller' is made by a simple comparison with a fixed threshold not by a comparison to its peers are required by the present claims. Such a simple rule-based system is the type of system that the system of the present application improves upon. In fact, the background of the present application specifically noted the short-comings of such systems:

One approach for identifying outlying behavior has been to establish a rules base system. The behavior of buyers and sellers are compared against the rules to detect outlying behavior. Operators will usually have some immediate success with such systems but have found, by experience, that the effectiveness of a rules base system will typically diminish with time. For example, a rules based system to identify fraudulent activity will decrease in effectiveness as the perpetrators of the fraudulent activity become aware of the rules and adjust their behavior to avoid detection."

The examiner attempts to read in a comparison of a seller to its peers into the Harding reference. Specifically, the examiner stated:

([paragraph]42 discloses comparing scores of the seller to a minimum seller score threshold to determine if sellers are recommended sellers or not, where the comparison is done against other sellers that do or do not exceed the minimum seller score threshold; e.g. a seller is considered to be recommended in comparison to other sellers who do not have scores high enough to be considered recommended sellers);

However, no such comparison between score of one seller and the score of another seller is disclosed in paragraph [0042]. Thus, effects of such a comparison that was never performed are moot.

Since the Harding reference fails to disclose the system of calculating peer behavior and the relative system based upon comparing a seller to its peers, the present invention, as claimed in the amended claims, is allowable over the Harding reference. Furthermore, neither the Cheng

nor the Amazon references cited by Examiner disclose this relative system based upon comparing a seller to its peers. The dependent claims include all of the limitations of the independent claims and are thus likewise allowable.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4058 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date March 2, 2009

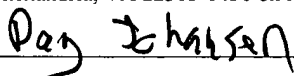
By

  
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 2, 2009.

Name



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